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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re Jeremiah D., a Person Coming Under
the Juvenile Court Law.

CONTRA COSTA COUNTY,
CHILDREN & FAMILY SERVICES
BUREAU,

Plaintiff and Respondent,

v.

GEORGE D.,

Defendant and Appellant.

A146803

(Contra Costa County
Super. Ct. No. J1401270)

Appellant George D. (Father) appeals jurisdictional and dispositional orders in which the trial court found his son Jeremiah D. (Minor) was a dependent child under Welfare and Institutions Code section 300, subdivision (d) and removed Minor from parental custody under section 361, subdivision (c)(1).¹ We affirm.

¹ All undesignated statutory references are to the Welfare and Institutions Code. The juvenile court had previously found jurisdiction under section 300, subdivision (b) based on allegations involving Minor's mother. The court also took jurisdiction over other children in the same household who were not related to Father; those findings are not at issue in the present appeal.

BACKGROUND

Father married Renee D. (also known as Renee A.) (Mother) in 1999 and they separated between 2005 and 2008. They are the parents of Minor, born June 2004. In 2011, Mother became the legal guardian of her sister's six children, Minor's cousins. They all lived together in a house in San Pablo.

On December 5, 2014, Olivia R., Mother's niece and ward who was then sixteen years old, told her school counselor Father had been sexually abusing her for five years. The Contra Costa County, Children & Family Services Bureau (Bureau) filed section 300 petitions on behalf of Minor and his cousins. Minor's petition alleged inappropriate physical discipline by Mother and sexual abuse of Olivia by Father as bases for jurisdiction; in an amended petition the Bureau alleged jurisdiction over Minor was proper under section 300, subdivisions (a) and (d). The section 300, subdivision (a) allegation was based on Mother's physical discipline of Minor; the section 300, subdivision (d) allegation was based on Father's sexual abuse of Olivia and Mother's failure to protect Olivia from Father.

The Bureau's detention/jurisdiction report included information from an interview with Mother. She allowed Father to stay in her home from time to time, mostly so he could parent Minor. She assumed guardianship over Minor's cousins, including the victim Olivia, due to her sister's drug use. She denied knowledge of abuse of Olivia by Father, although she admitted Olivia "complained about" Father before Mother became her guardian.

The Bureau's detention/jurisdiction report related that Olivia had disclosed to her school counselor that Father had touched her sexually, forced her to orally copulate him, and attempted intercourse. In a supplemental report, the Bureau described a Children's Interview Center (CIC) interview of Olivia. Olivia disclosed that when she was about twelve years old Father began taking her to the living room in the middle of the night to fondle her breasts under her bra. Later it escalated to him taking his clothes off and touching her vagina under her panties, as well as oral copulation and attempted sexual intercourse. The abuse also occurred when Mother was taking classes and Father was at

home with the children. Father would send the other children into the garage to play video games and sexually abuse Olivia in the master bedroom. The most recent occurrence was the day before her report to her school counselor. Olivia told Mother about the abuse, but Mother did not believe her, and Mother responded with anger and punishment.

Olivia gave a detailed account of Father's abuse to the nurse who conducted a sexual assault examination; the account was consistent with her CIC interview. The doctor who performed the exam reported "there was no physical evidence" of the alleged sexual abuse, and Olivia had "never had intercourse." The Bureau's supplemental report also related that Olivia told a police officer at a San Pablo police station that Father had abused her by fondling and kissing her, touching her vagina, and attempting intercourse.

A second supplemental report described all the CIC interviews of all the children, including Minor, Olivia, and Olivia's siblings. Minor and Olivia's siblings generally confirmed that Father watched them when Mother was not home; on those occasions the other children normally played video games in the garage while Olivia was in her bedroom and Father was in another bedroom. None of them reported being abused by Father or witnessing any sexual abuse. The second supplemental report also related that Olivia was interviewed again at the CIC and provided additional details.

Jurisdictional Hearing

At the March 2015 jurisdictional hearing, the Bureau struck the section 300, subdivision (a) (risk of serious physical abuse) allegation from Minor's petition (as well as the petitions associated with Minor's cousins) and added a subdivision (b) (failure to protect) allegation. Mother pled no contest to the section 300, subdivision (b) allegation based on her inappropriate physical discipline; the juvenile court sustained the allegation and declared Minor (as well as his cousins) a dependent child.

The juvenile court then proceeded to consider the section 300, subdivision (d) sex abuse allegations involving Father. Olivia, who was then 16 years old and in the 10th grade, testified in chambers. She testified that prior to initiation of the dependency proceedings she lived in a house in San Pablo with Father, Mother, Minor, and her

siblings. Father had an apartment in Rodeo but he let Mother's adult daughter Rochelle stay there. The abuse by Father began when Olivia was in 7th grade and they were living at another house. Father touched her underneath her shirt in the living room in the middle of the night. When she told Mother about the abuse, Mother got mad at her, hit her, and did not believe her. Olivia also told Rochelle about the abuse, but Rochelle did not believe her either. Olivia testified she and the other children were regularly at home alone with Father during a class Mother had three days a week. Once they moved to their current house, it was during Mother's class time that Father abused her. She was not asked to recount again the details of Father's abuse, but she said he abused her on "many occasions" in "many ways." The most recent incident was on December 3, 2014. Father pulled Olivia into his bedroom and touched her "private parts." The other children were home at the time and on other occasions, but they did not see the abuse.

Rochelle A.—Mother's adult daughter, Minor's half-sister, and Olivia's cousin—testified at the jurisdictional hearing. During significant periods of time she lived at Mother's home; she never witnessed any sexual abuse by Father, or other suspicious behavior. Father lived in Rodeo with another relative; Rochelle moved in with him there in April 2014. Rochelle testified she would care for the children at Mother's house while Mother was at her classes; if Father was present, she would care for the girls and Father would watch the boys. Rochelle recalled a time in 2010 that Olivia wrote a letter stating she was being touched by Father. Rochelle gave it to Mother and said it was untrue. Rochelle also told Olivia she didn't believe her. The next day, Olivia wrote a second letter apologizing for lying in the first letter.

Mother testified that while she was at classes the girls were either cared for by Rochelle or by Mother's grandmother. Appellant sometimes watched the boys, but he was never alone at the house with the children. Appellant did not live with Mother but he would "come and go, and he would stay nights."

A San Pablo police officer testified about interviewing Olivia on December 5, 2014, in her high school counselor's office. Olivia was crying and "pretty distraught."

She alleged Father had been sexually abusing her; the first time was in 2010. Olivia said she told her aunt (Mother) about the abuse and Mother said she was lying.

A San Pablo police detective testified regarding his investigation. He interviewed Olivia on December 5, 2014, and she described multiple incidents of sexual abuse, beginning with Father fondling her breasts in 2010. The detective testified he could not find evidence of sexually-suggestive texts Olivia said Father had sent to her. He testified Olivia told him “two inconsistent versions” of Father’s most recent alleged sexual abuse, although he admitted it “could have been” that Olivia was confusing two different incidents.

The detective interviewed Father, who denied Olivia’s allegations. He admitted he sometimes watched the children when Mother was away. Mother told the detective that when she was away she would ensure at least one other child would be with Olivia when she was going to be around Father. Rochelle told the detective that Olivia previously said she was being sexually abused by Father, but Olivia recanted after Olivia was punished for making the allegation.

The detective also interviewed three of Olivia’s siblings, who said they live with Mother and Father. The detective arrested Father at Mother’s house in San Pablo at 11:45 p.m. Based on his search of the house, the detective believed it was “evident” Father lived there. He found Father’s clothing at the house. Father said he had a residence in Rodeo for “financial reasons.” No criminal charges were filed against Father.

The juvenile court found Olivia’s testimony “quite credible” and mentioned there was corroboration for her assertion she had been left alone with Father and general consistency in her story. The court expressly found that Rochelle’s testimony was not credible, in part based on her incredible claim there was not a single day Father was alone with the children. The court sustained counts d-1 (alleging Father’s sexual abuse of Olivia) and d-2 (alleging Mother’s failure to protect Olivia) of the amended petition. The court found that Minor was a person described under section 300 subdivision (d).

Disposition

The Bureau recommended that Minor be removed from his parents' care and that family reunification services be provided to Mother and Father. Father submitted on the Bureau's report, and the juvenile court adopted the Bureau's recommendations. Father appealed.

DISCUSSION

I. *Substantial Evidence Supports the Juvenile Court's Jurisdictional Finding Based on Father's Sexual Abuse of Minor's Cousin*

Father contends the juvenile court's July 2015 order sustaining dependency jurisdiction over Minor under section 300, subdivision (d), based upon Father's alleged sexual abuse of Olivia, was not supported by substantial evidence. The claim fails.

A. *Father's Claim is Not Moot and This Court Exercises Its Discretion to Consider the Claim Despite the Alternate Ground for Jurisdiction*

On August 25, 2016, the Bureau moved to dismiss this appeal on the ground of mootness. The Bureau asks this court to take judicial notice of an August 8 order granting joint legal custody of Minor to the parents and sole physical custody to Mother, vacating the dependency, and dismissing Minor's petition. The Bureau argues the August 8 order rendered the present appeal moot. We take judicial notice of the August 8 order. (See *In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1417.) But that order does not render moot Father's claim the juvenile court erred in sustaining the petition based on the allegation involving Father because "[t]he court's jurisdictional findings as to Father, if erroneous, could have severe and unfair consequences to Father in future family law or dependency proceedings." (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716; see also, e.g., *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548.)

The Bureau also argues this court need not consider Father's claims on appeal because, even if the juvenile court erred in sustaining the petition based on the allegations involving Father, the court properly sustained the petition based on the allegations of inappropriate physical discipline by Mother. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492 ["[I]t is necessary only for the court to find that one parent's conduct has

created circumstances triggering section 300 for the court to assert jurisdiction over the child. . . . [A]n appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence.”].) Nevertheless, because of the potential adverse consequences to Father in future proceedings, this court exercises its discretion to consider Father’s claim the jurisdictional finding is not supported by substantial evidence. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762; see also *In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1316; *In re Daisy H.*, *supra*, 192 Cal.App.4th 716, fn. 4.)

B. *The Juvenile Court’s Finding Is Supported by Substantial Evidence*

Section 300, subdivision (d) provides a basis for a juvenile court to assume jurisdiction where a child “has been sexually abused, or there is substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent. . . .” The Bureau had the burden of proving by a preponderance of the evidence that Minor was a person described by section 300. (§ 355, subd. (a); *In re Jordan R.* (2012) 205 Cal.App.4th 111, 135.) On appeal, we review the juvenile court’s finding “to determine whether there is substantial evidence in the record that supports the findings. We do not reweigh the evidence, evaluate the credibility of witnesses or resolve evidentiary conflicts. The appellant has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders. [Citation.] We draw all legitimate and reasonable inferences in support of the judgment.” (*Jordan R.*, at pp. 135–136.)

“[S]ection 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. [Subdivision (d)] require[s] only a ‘substantial risk’ that the child will be abused or neglected. The legislatively declared purpose . . . ‘is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm.*’ (§ 300.2, italics added.) ‘The court need not wait until a child is

seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’ [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

“[S]exual abuse of one child may constitute substantial evidence of a risk to another child in the household—even to a sibling of a different sex or age or to a half sibling.” (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 968.) Although differences in age or gender between the child at issue and the prior victim may affect the likelihood a child will be sexually abused, there is no rule there must be certain commonalities between the prior victim and the child to support a jurisdictional finding under section 300, subdivision (d). Instead, as recently explained by the Supreme Court in *In re I.J.*, jurisdiction may be appropriate despite the lack of such commonalities where the prior abuse was severe. The Supreme Court reviewed court of appeal decisions sustaining and rejecting jurisdiction based on the sexual abuse of another child and concluded, “the more severe the type of sibling abuse, the lower the required probability of the child’s experiencing such abuse to conclude the child is at a substantial risk of abuse or neglect under section 300. If the sibling abuse is relatively minor, the court might reasonably find insubstantial a risk the child will be similarly abused; but as the abuse becomes more serious, it becomes more necessary to protect the child from even a relatively low probability of that abuse.” (*In re I.J.*, *supra*, 56 Cal.4th at p. 778.)

In emphasizing that a juvenile court can assume jurisdiction over a child of a different gender than the victim, *In re I.J.* pointed out that the Legislature established a presumption in section 355.1, subdivision (d), that a prior finding of sexual abuse of another is *prima facie* evidence a child is within the scope of section 300. (*In re I.J.*, *supra*, 56 Cal.4th at p. 779.) That presumption was based on the Legislature’s finding “that children of the State of California are placed at risk when permitted contact with a parent or caretaker who has committed a sex crime. Further, the Legislature finds that children subject to juvenile court dependency jurisdiction based on allegations of molestation are in need of protection from those persons.” (Stats. 1999, ch. 417, § 1, p. 2780; *In re I.J.*, at p. 779.) *In re I.J.* stated that section 355.1, subdivision (d), “evinces a

legislative intent that sexual abuse of someone else, without more, at least *supports* a dependency finding.” (*In re I.J.*, at p. 779.)

We recognize that *In re I.J.* was decided under section 300, subdivision (j), which encompasses allegations of risk of abuse due to abuse of a child’s sibling. (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.) The Court quoted *In re Maria R.* (2010) 185 Cal.App.4th 48, 64, disapproved on another ground in *In re I.J.*, at p. 781, for the proposition that subdivision (j) “ ‘accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.’ ” (*In re I.J.*, at p. 774.) However, that language in *Maria R.* was in response to the appellant parent’s contention that section 300, subdivision (j) permits a court to assume jurisdiction over a child only where the child is at risk of the same type of abuse or neglect suffered by the child’s sibling. Instead, the court interpreted the statute to require the juvenile court “to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j).” (*Maria R.*, at p. 64; accord *In re I.J.*, at p. 774.) Nothing in *In re I.J.* suggests the factors properly considered in determining a risk of sexual abuse under section 300, subdivision (j) are not also properly considered in making the same determination under section 300, subdivision (d). We also note that at least one case implicitly approved by the Supreme Court, *In re Ana C.* (2012) 204 Cal.App.4th 1317, arose in relevant part under section 300, subdivision (d). (*In re I.J.*, at pp. 774–775, 780; *In re Ana C.*, at pp. 1319, 1325.)

We agree with Father the circumstances that Olivia is a girl, older than Minor, and not Father’s child tend to suggest a lower risk that Minor will be sexually abused. Father also emphasizes he had no history of abuse, and the other children were not abused and did not witness the abuse of Olivia.² However, the abuse described by Olivia was

² Father also suggests the risk to Minor was lower because Father did not live with the children. As we discuss in Part II of this decision, the juvenile court impliedly found Father lived with Mother at least part of the time, and that finding is supported by

“serious and prolonged” and it is also relevant that Father sexually abused Olivia “while the other children were living in the same home and could easily have learned of or even interrupted the abuse.” (*In re I.J.*, *supra*, 56 Cal.4th at p. 778.) The differences between Minor and Olivia, the circumstance that they are cousins rather than siblings, and the fact that Father was not accused of abusing any of the other children are not determinative under *In re I.J.*

A comparison to the facts of *In re Ana C.*, *supra*, 204 Cal.App.4th 1317, is instructive. As in the present case, *In re Ana C.* involved a blended household with children of different parents. (*Id.* at p. 1319.) The sexual abuse victim was a girl who lived in a house with her mother and two sisters until they were joined by the abuser and his two sons (from a different mother); later, a daughter was born who was the victim’s half-sister. (*Ibid.*) The victim described one serious incident of abuse when she was 12 years old, involving touching, oral copulation, and penetration. (*Id.* at pp. 1320–1323.) Although there was little corroboration for her allegations, the juvenile court credited her testimony because of her demeanor and the general consistency of her accounts in various interviews. (*Id.* at pp. 1324–1325.) The court sustained allegations as to the victim and her sisters and half-sister under section 300, subdivisions (b), (d), and (j), and sustained allegations as to the father’s sons under section 300, subdivisions (b), and (d). (*Ana C.*, at p. 1325.)³ As relevant to the present case, the court of appeal affirmed the assumption of jurisdiction over the father’s adolescent sons, despite that the sons were older, a different gender, and not siblings of the victim. (*Id.* at pp. 1319, 1330–1332.) The court emphasized the “ ‘aberrant’ ” nature of the abuse, the victim had mental disabilities, and the victim’s mother failed to take action to stop the abuse after being told

substantial evidence. Father also references Mother’s testimony that Father was never alone with the children. That testimony was plainly implausible and necessarily rejected by the juvenile court in its finding that Olivia was abused by Father. The court also expressly rejected similar testimony from Rochelle.

³ The juvenile court also sustained and the court of appeal discussed allegations as to a daughter who did not reside in the house; that aspect of the decision is not relevant to the present case. (*In re Ana C.*, *supra*, 204 Cal.App.4th at pp. 1330–1332.)

about it. (*Id.* at p. 1332.) There are, of course, some differences between *Ana C.* and the present case, but, given the circumstances in Mother’s household and the nature and extent of the abuse described by Olivia, the overall evidence of risk in the present case is at least equivalent to that in *Ana C.*

In his reply brief, Father suggests this court should place little weight on the frequency and severity of the sexual abuse as described by Olivia because there was evidence in the record that would have supported a finding she was not abused. In particular, Father notes he was not criminally charged with abusing Olivia and references the investigating detective’s testimony—presumably meaning the detective’s testimony regarding the lack of corroborating evidence and describing Olivia’s inconsistent accounts of one incident. Father asserts, “Given the low probability father actually sexually abused [Olivia], Jeremiah’s consequent substantial risk of suffering similar abuse was essentially non-existent.” However, the court’s finding Father sexually abused Olivia is clearly supported by substantial evidence, including her various accounts to others and her live testimony that the juvenile court found “quite credible.” Father cites no authority supporting the proposition that this court can give the sustained allegations of abuse less weight because there was contrary evidence. As observed in *In re Ana C.*, *supra*, 204 Cal.App.4th at page 1329, “It was the dependency court’s face-to-face role in the courtroom to assess [the victim’s] testimony in light of the nature and tenor of her testimony, her demeanor, and the impeaching factors. We see nothing in the record to suggest that the dependency court failed to perform that task.” (See also *In re Jordan R.*, *supra*, 205 Cal.App.4th at 136 [“To the extent the trial court’s findings rest on an evaluation of credibility, the findings should be regarded as conclusive on appeal. [Citation.] To warrant rejection of the statements of a witness who has been believed by the trier of fact, it must be physically impossible for the statements to be true, or their falsity must be apparent without resorting to inferences or deductions.”].)

The juvenile court’s finding that Minor is a child described under section 300, subdivision (d) is supported by substantial evidence.

II. *Father's Challenge to the Dispositional Order Fails*

Father contends the juvenile court erred as a matter of law in ordering Minor removed from his custody under section 361, subdivision (c)(1), because Minor did not live with Father at the time the dependency action was initiated.⁴ (See *In re Dakota J.* (2015) 242 Cal.App.4th 619, 629 [§ 361, subd. (c)(1) “does not authorize an order of removal from *every* parent having legal custody rights, even those who do not currently reside with their children”].) The claim fails.

Father forfeited this claim by failing to object at the time of the juvenile court's dispositional determination. (*In re T.G.* (2013) 215 Cal.App.4th 1, 14 [“In dependency litigation, ‘[a] party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court.’ ”].) Father argues the claim is not forfeited because the court erred as a matter of law, but his claim rests on his factual assertion he did not live with Minor—an issue on which the evidence below was conflicting. If Father had objected to the Bureau's recommendation on that basis, the juvenile court would have had an opportunity to make an express finding on the issue, or to take additional evidence if necessary. Accordingly, Father forfeited the claim by failing to raise it below. (Cf. *In re Dakota J.*, *supra*, 242 Cal.App.4th at p. 630 [exercising discretion to consider similar claim where applicability of statute was pure issue of law because “it was undisputed throughout the proceedings below that the boys were not residing with mother”].)

Moreover, even assuming Father spent most of his time at his Rodeo residence, as Mother testified, Father fails to explain why his part time residence at the family home is insufficient basis to support the dispositional order. Among other things, he fails to cite

⁴ Section 361, subdivision (c)(1) prohibits a juvenile court from removing a dependent child from the physical custody of his parents “with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence” there “would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. . . .”

any authority for the proposition that a parent can have only one residence for the purpose of an order removing a child from the parent's custody. At the very least, the evidence showed Father resided with Minor part time. Father has forfeited any argument that is insufficient to support the juvenile court's order. (*Placer County Local Agency Formation Com. v. Nevada County Local Agency Formation Com.* (2006) 135 Cal.App.4th 793, 814 ["We need not address points in appellate briefs that are unsupported by adequate factual or legal analysis."].)

Finally, the juvenile court's implied finding Father resides with Minor is supported by the record. Olivia and three of her siblings told the San Pablo detective Father lived with them in San Pablo. The detective who arrested Father at that house close to midnight opined that based on his search it was "evident" Father lived there, and Father told him he had the Rodeo residence for "financial reasons." Because there is substantial evidence Father lived with Minor, the trial court did not err in removing Minor from Father's custody. (*In re Jordan R.*, *supra*, 205 Cal.App.4th at pp. 135–136.)

DISPOSITION

The juvenile court's orders are affirmed.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.

(A146803)